

REMARKS:

- 1) Referring to item 10) of the Office Action Summary, please indicate the acceptance of the drawings filed on March 31, 2004.
- 2) The Abstract has been editorially amended, without introducing any new matter. Entry of the amendment is requested.
- 3) The claims have been amended as follows.

Claim 1 has been amended to recite that the wavy bottom portion of the sidewall member of the wavy plate assembly is disposed at and laterally overlaps only a laterally-limited side edge portion of the wavy board adjoining a first side edge of the wavy board. This limited lateral extent of the wavy bottom portion can be clearly seen, for example, in Figs. 3 to 6 of this application, and is described in the original specification, for example at page 3 lines 11 to 13 and page 10 line 21 to page 11 line 7. This amendment does not introduce any new matter.

The dependent claims have been amended editorially, and where necessary for proper conformance with the amended independent claim.

New claims 12 to 15 have been added. Claim 12 is supported by the original disclosure of Figs. 3 to 6, claim 13 is supported by Figs. 4 to 6, and claim 14 is supported by Figs. 1, 2 and 7. New independent claim 15 is based on a combination of prior claims 1 and 4. The new claims do not involve any new matter.

Entry and consideration of the claim amendments and the new claims are respectfully requested.

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- 4) Referring to section 6 on page 3 of the Office Action, the indication of allowable subject matter in original claim 9 is appreciated. New independent claim 15 is based on a combination of original claims 1 and 9, and should thus be allowable.
- 5) Referring to section 2 on page 2 of the Office Action, the rejection of claims 1 to 3 and 5 to 8 as anticipated by US Patent 6,775,930 (Fuerst) is respectfully traversed.
- 6) According to the present invention, a wavy plate assembly includes a wavy board disposed on a lower surface of the first midsole, and a sidewall member. The sidewall member includes a wavy bottom portion and an upraised portion.

According to currently amended claim 1, the wavy bottom portion of the sidewall member is disposed at and laterally overlaps only a laterally-limited side edge portion of the wavy board adjoining a side edge of the wavy board. This feature of the invention can be clearly seen, for example, in Figs. 3 to 6 of the present application.

It is significant that the wavy bottom portion of the sidewall member is disposed at and overlaps only a laterally-limited side edge portion of the wavy board, because thereby the same pre-molded sidewall members can be used for different shoe sizes, i.e. different sole widths, because the width of the wavy plate assembly is not fixed to the sole width. In fact, different sole widths can be achieved even using the same sidewall members and the same wavy board, by providing a different limited extent of this lateral overlap (compare D to

D' in Figs. 4 and 5). Such a structure and such advantages of the present invention are not disclosed by the prior art reference.

The Examiner has compared the first cushion member (50) of the Fuerst reference to the presently claimed sidewall member, and the first member (30) of Fuerst to the presently claimed wavy board. However, the cushion member (50) of Fuerst actually includes an underfoot board portion that extends entirely across the width of the sole structure and overlaps the entire first member (30) (see Fig. 3). This structure is also described, with the first cushion member (50) located in the heel portion (22) of the midsole (16) (see col. 7 lines 7 to 16). Thus, Fuerst does not disclose the presently claimed structural features, whereby the wavy bottom portion of the sidewall member is disposed at and overlaps only a laterally-limited side edge portion of the wavy board.

Moreover, nothing in the Fuerst reference would have suggested or motivated a modification of the disclosed structure to provide only a laterally-limited overlap of a wavy bottom portion with a wavy board. That would not have provided the intended purpose of under-heel cushioning of the cushion member (50). Also, it is clearly evident that the cushion member (50) extends laterally continuously across, and thus overlaps all of the alleged wavy board, i.e. the first member (30).

- 7) The dependent claims recite additional features that further distinguish the invention over the prior art, for example as follows.

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According to present claim 3, the midsole structure further includes a second midsole disposed under the first midsole, with the wavy plate assembly interposed between the first midsole and the second midsole. A person of ordinary skill in the art understands that a midsole is **NOT** an outsole. In other words, the terms "midsole" and "outsole" are clearly understood to be two distinct components of a shoe sole combination. For example, an outsole has an outer exposed ground contact surface, while a midsole does not, because it is arranged above an outsole. Thus, a person of ordinary skill in the art would not have interpreted the reference in the manner as now proposed by the Examiner with regard to claim 3.

Regarding present claim 5, the reference does not disclose both a discrete sidewall member on one side, and an integrally formed upraised portion on the other side, of the wavy board. There is no such distinction, in the prior art, between the sidewall member and the upraised portion on opposite sides of the wavy board.

- 8) For the above reasons, please withdraw the rejection of claims 1 to 3 and 5 to 8 as anticipated by Fuerst.
- 9) Referring to section 5 on page 3 of the Office Action, the rejection of claim 4 as obvious over Fuerst is respectfully traversed. Claim 4 depends from claim 1, which has been discussed above in comparison to the Fuerst reference. Claim 4 does not involve a mere duplication. Instead, it involves a second wavy board interposed between the first and second

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midsoles, and disposed under the wavy plate assembly. Note that the first wavy board is a component of the wavy plate assembly, and claim 4 does not recite direct duplication of an entire wavy plate assembly. Also, claim 4 is patentable already due to its dependence from claims 3 and 1, which have been discussed above. Please withdraw the rejection of claim 4.

- 10) New dependent claims 12 to 14 recite additional features that further distinguish the invention over the prior art. The Examiner is respectfully requested to consider the features of each of these claims, by which it will be apparent that these features are contrary to teachings of Fuerst.
- 11) As mentioned above, new independent claim 15 should be allowable, because it is based on a combination of the allowable subject matter of claim 9 with original claim 1.
- 12) Favorable reconsideration and allowance of the application, including all present claims 1 to 15, are respectfully requested.

Respectfully submitted,
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Applicant

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Enclosures:
Transmittal Cover Sheet
Term Extension
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